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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,276	01/08/2004	David L. Collins	200314702-1	6597

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INTELLECTUAL PROPERTY ADMINISTRATION
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EXAMINER
DUDEK JR, EDWARD J

ART UNIT	PAPER NUMBER
2186	

MAIL DATE	DELIVERY MODE
09/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action Before the Filing of an Appeal Brief	10/753,276	COLLINS, DAVID L.
	Examiner	Art Unit	
	Edward J. Dudek	2186	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see continuation sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

Continuation of 11.

The affidavit filed on 20 August 2007 under 37 CFR 1.131 has been considered

but is ineffective to overcome the Lee reference for the following reasons.

1. It is unclear to the Examiner what Applicant it trying to convey with the statement

   "... completed my invention...". Under 37 CFR 1.131 there are three ways to

   establish prior invention of the claimed subject matter; actual reduction to

   practice, conception of the invention coupled with due diligence to reduction to

   practice, and conception of the invention coupled with due diligence to the filing

   date of the application. Since there are not exact dates in Applicant's affidavit,

   due diligence cannot be shown, therefore it is assumed that Applicant is trying to

   convey actual reduction to practice. There is insufficient evidence for a showing

   of actual reduction to practice. The Applicant states in the affidavit that a test

   program was prepared. There is no evidence presented that the invention was

   sufficiently tested to demonstrate that it worked for its intended purpose (see

   MPEP 2138.05 II).

2. The evidence submitted by the applicant in the affidavit is not commensurate with

   the scope of the claims. As per claim 1, there are a series of steps that are

   performed prior to the step of resetting the computer system. The flow chart

   submitted in the affidavit only refers to the steps taken *after* a reset of the

   computer system. As per claim 4, the claim uses firmware to perform a restart,

   and also determines if computer memory initialization is initiated by firmware.

   The flow chart submitted by Applicant is only checking to see if the reset is

firmware initiated. As per claim 5, the claim creates the software stack in the portion of memory. The flow chart submitted by Applicant states that stack based code is used, but there is no specifics as to where the code is run. As per claim 7, the claim performs the steps of generating the configuration data, saving it, then copying it back again to use both memory modules to execute code to initialize the second memory controller. The flow chart submitted by Applicant fails to show the saving and copying *without* performing a reset of the computer system in between the saving and the copying step. As per claim 8, the claim uses the portion of the memory that was initialized to run the remainder of the code to initialize the rest of the memory. The flow chart submitted by Applicant only states that the reminder of the memory is initialized, but does not show that the code is run in the initialized memory module.

3. As per 37 CFR 1.116(e) Applicant is required to show sufficient reasons why the affidavit is necessary and was not earlier presented. The affidavit contains no evidence to this effect.

Applicant states that the Zimmer reference does not teach or fairly suggest a memory controller that is initialized to use a first computer memory under control of stack-less instructions and configuration data that enables the memory controller to use BOTH the first and second computer memory. The Examiner respectfully disagrees. When the system is powered on, the code that performs the initialization routine must come from a non-volatile memory store. The memory controller lies between the processor and the ROM, so therefore, since stack-less instructions are

used on start up, the memory controller passes these instructions to the cache memory in the processor (this access is a use of the cache memory). Once the system is fully initialized, the memory controller is then responsible for passing instructions between the cache memory, the RAM, and the ROM. Therefore the memory controller is accessing all the memories, and is using them (see [0019]-[0021]).

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